



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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CHICAGO, IL 60604-3590

OCT 25 2012

NEPA

REPLY TO THE ATTENTION OF:

E-19J

Timothy O'Brien
U.S. Department of Transportation
U.S. Coast Guard
Docket Management Facility (M-30)
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue S.E.
Washington, D.C. 20590-0001

RE: Tier 1 Draft Environmental Impact Statement: U.S. Coast Guard Rulemaking for Dry Cargo Residue Discharges in the Great Lakes (Docket Number USCG-2004-19621) - CEQ No. 20120249

Dear Mr. O'Brien:

The U.S. Environmental Protection Agency has reviewed the referenced Tier 1 Draft Environmental Impact Statement (DEIS), which was prepared by the U.S. Coast Guard (USCG), pursuant to our authorities under the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

USCG proposes to issue a new rule regulating the operation of U.S. and foreign vessels carrying bulk dry cargo such as limestone, iron ore, and coal on U.S. waters of the Great Lakes. The Tier 1 DEIS was produced to support this new rule. The proposed new rule would continue to allow non-hazardous and non-toxic discharges of dry cargo residue (DCR) in limited areas of the Great Lakes. Under the preferred alternative, vessel owners would be responsible for minimizing DCR discharges using best management practices. Under the preferred alternative (Alternative 2), vessel owners and operators will be required to maintain a DCR management plan aboard each vessel, and produce the management plan to USCG upon request. Based on information provided in the DEIS, we have the following comments.

We note that one of the alternatives considered but screened out in Section 2.0 of the DEIS involved "Include DCR as part of the National Pollutant Discharge Elimination System's Vessel General Permit Issued by U.S. Environmental Protection Agency under its Clean Water Act Responsibility." We agree that this is not a viable alternative. However, we wish to clarify, as

explained in Section 3.5.2.4 of the 2008 Vessel General Permit (VGP) Fact Sheet, that as an EPA-issued general permit, rubbish, trash, garbage or other similar materials, including DCR, are not eligible for coverage under the VGP because such materials were never subject to the exclusion from NPDES permitting contained in 40 C.F.R. 122.3(a).

Because of this, those materials are excluded from the EPA-issued VGP and are within the purview of permitting by Great Lakes states with NPDES delegation, rather than EPA. In addition, we have some concerns with the description of the VGP as set out in Section 2.0 of the DEIS. Because this alternative is not viable for the reasons stated above, and was in fact screened out by Section 2.0 of the DEIS, these issues do not affect our rating of the DEIS. However, we would like to work with you to clarify the relevant text in Section 2.0 for the Final Environmental Impact Statement (FEIS).

Additionally, it appears that the majority of DCR discharges include limestone, iron ore, and coal. Though not particularly harmful chemically to the Great Lakes, USCG should be aware that benthic habitat could be impacted as DCR discharges accumulate. The FEIS should outline steps in which USCG will take to encourage vessel owners and operators to recover as much DCR as possible during deck sweeps, and store recoverable residual DCR for prompt unloading and reuse elsewhere. Use of magnets, for example, is an economically-justifiable method for recovering residual iron ore. To waste recoverable natural resources is not environmentally justifiable, nor does it have economic utility.

The DEIS identifies many cases where poor recordkeeping was very common, resulting in data that were unusable. Due to the demonstrated inconsistencies in DCR reporting by vessel operators, we suggest that USCG institute some form of recordkeeping training or consider other revisions to the reporting forms or reporting process to ensure that the reporting will be of such quality to ensure its usefulness.

USCG should explain how the distances required for discharges of various DCR were derived. Additionally, line 3290 is based on a 2001 EPA reference. Research indicates the open water food web has changed drastically since then 2001. For example, the Lake Huron and Lake Michigan food webs are collapsing.¹ We recommend updating the DEIS to reflect recent food web changes. We are concerned that the sensitive areas listed in Section 3.2.3.2 do not include all of the historic spawning reefs in the lakes, particularly Lakes Superior, Michigan and Ontario. We recommend USCG analyze historic bathymetric maps to better identify potential reef structures in the Great Lakes.

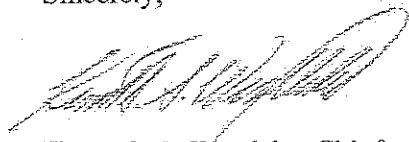
Based on information contained in the DEIS, we believe the preferred alternative best addresses the purpose and need as stated within the document, though detailed analyses regarding benthic habitat, food web changes, DCR record-keeping, and recoverability of residual DCR should be discussed in greater detail in the FEIS. We have identified some minor concerns in the DEIS,

¹ See http://www.michigan.gov/documents/LakeHuronNewEcosystem-foodweb_122463_7.pdf

however, the project overall will likely result in decreased impacts to the natural environment. Therefore, we rate this project as *Lack of Objections (LO)*. A summary of the rating system used in the evaluation of the DEIS is enclosed for your reference.

Please mail us future NEPA documents on this project as they become available. If you have any questions, please call Mike Sedlacek of my staff at 312-886-1765 or e-mail him at sedlacek.michael@epa.gov.

Sincerely,



Kenneth A. Westlake, Chief
NEPA Implementation Section
Office of Enforcement and Compliance Assurance

Encl: Summary of rating definitions and follow up action

SUMMARY OF RATING DEFINITIONS AND FOLLOW UP ACTION

Environmental Impact of the Action

LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impacts. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1-Adequate

The EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collecting is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information

The draft EIS does not contain sufficient information for the EPA to fully assess the environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640 Policy and Procedures for the Review of the Federal Actions Impacting the Environment